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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA,

Defendants.

Case No. 5:07-CV-01389-RS

PLAINTIFFS' SUPPLEMENTAL RESPONSE TO FINNEGAN'S MOTION TO WITHDRAW AS COUNSEL FOR WINSTON WILLIAMS

Date: January 23, 2008
Time: 9:30 A.M.
Judge: Honorable Richard Seeborg

Dockets.Justia.com

Finnegan Henderson Farabow Garrett & Dunner's Motion to Withdraw as Counsel for Winston Williams is moot. The sole basis for Finnegan's request was that it had lost contact with Williams and could no longer represent him effectively. On January 5, 2008, however, Plaintiffs received a declaration from Williams, as well as Pacific Northwest Software, on pleading paper from the Finnegan firm.[1] Williams executed his declaration on January 2, 2008 – the day Plaintiffs' opposition to the present motion was due.[2] It appears that the Finnegan firm is communicating with Williams.

Williams' declaration, which Plaintiffs received on January 5, 2008, was the first that Plaintiffs' counsel knew that the Finnegan firm was once again in contact with Williams. The Finnegan firm had numerous opportunities to advise Plaintiffs of this possibility prior to their response brief being due. Specifically, Plaintiffs' counsel and the Finnegan firm communicated several times, including once by telephone, over the preceding two weeks. Finnegan never advised Plaintiffs that it had located and communicated with Williams.

Defendants' failure to advise Plaintiffs of the recent contact caused needless work and expenditures. Plaintiffs were required to engage resources during a lightly staffed holiday period to prepare an opposition memorandum based upon facts that defendants had presented but knew had become untrue. To that end, absent Court guidance, Plaintiffs will separately file a motion seeking its costs and fees associated with its responsive papers.

Because counsel for Williams has now resumed contact with its client, Facebook believes the current Motion to Withdraw is moot.

Dated: January 7, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Theresa A. Sutton /s/

Theresa A. Sutton
Attorneys for Plaintiffs
THE FACEBOOK, INC. and MARK ZUCKERBERG

[1] Plaintiffs have attached copies of the declarations, which do not appear to comply with the Court's December 12, 2007, Order compelling further responses to Plaintiffs' interrogatories. Plaintiffs will file a separate motion concerning these declarations.

[2] The Certificate of Service indicates Williams' declaration was served only by United States Mail on January 2, 2008.

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 7, 2008.

Dated: January 7, 2008

Respectfully submitted,

/s/ Theresa A. Sutton /s/
Theresa A. Sutton